

1 Joshua P. Davis (SBN 193254)
2 Kyla J. Gibboney (SBN 301441)
3 Julie A. Pollock (SBN 346081)
4 BERGER MONTAGUE PC
5 505 Montgomery Street, Suite 625
6 San Francisco, CA 94111
7 Tel: (800) 424-6690
8 jdavis@bm.net
9 kgibboney@bm.net
10 jpollock@bm.net

11 [Additional Counsel Appear on Signature Page]

12 *Attorneys for Plaintiff and the Proposed Class*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KEITH BUJOLD, Individually and on behalf of
all others similarly situated,

Plaintiff,

v.

WELLS FARGO & COMPANY and WELLS
FARGO CLEARING SERVICES, LLC, dba
WELLS FARGO ADVISORS,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Keith Bujold (“Plaintiff”), on behalf of himself and all others similarly situated
2 whose cash in accounts custodied by defendant Wells Fargo Clearing Services, LLC dba Wells
3 Fargo Advisors (“WFA”), a wholly-owned subsidiary of its control person, defendant Wells Fargo
4 & Company (“Wells Fargo”) (together “Defendants”), was subject to the Wells Fargo Advisors’
5 Cash Sweep Program, alleges as follows against Defendants, based on personal knowledge as
6 to Plaintiff and his own acts, and otherwise on information and belief, based on the
7 investigations of his counsel, which included a review of documents created and distributed
8 by Defendants, SEC filings, and other publicly available commentary, analysis, and
9 information. Upon information and belief, Plaintiff believes that discovery will further
10 support the allegations in this class action complaint.

11 I. INTRODUCTION

12 1. This case arises out of a cash sweep program implemented by WFA, whereby
13 uninvested cash balances in a customer’s account are automatically “swept” and transferred by
14 WFA into interest-bearing bank accounts discretionarily selected by WFA (the “Bank Deposit
15 Sweep Programs,” or “Programs,” consisting primarily of the “Standard Bank Deposit Sweep”
16 and “Expanded Bank Deposit Sweep”) or, in some instances, other sweep arrangements made
17 available to WFA customers. This action concerns only the Bank Deposit Sweep Programs and
18 not any other sweep arrangements.

19 2. Pursuant to the terms of the Programs, customer cash is swept into accounts held
20 with banks both affiliated with WFA (“Affiliated Banks”), and not affiliated with WFA
21 (“Unaffiliated Banks”) (together the “Program Banks”). WFA implemented the Bank Sweep
22 Programs ostensibly to offer its customers a vehicle to hold cash that offers FDIC insurance on
23 those cash deposits.

24 3. Upon opening an account with WFA, customers were automatically enrolled in the
25 Bank Sweep Programs, and upon enrollment in the Programs such customers were unable to select
26 any bank deposit cash sweep options which might have offered better terms than those made
27 available by WFA.

1 4. While claiming to have designed, implemented and operated the Bank Sweep
2 Programs as its customers' agent, in reality, WFA used the Bank Sweep Programs to generate
3 enormous fees for itself at the expense of its customers who receive only a minimal return on their
4 cash deposits, while WFA keeps for itself the vast majority of interest and fees the Program Banks
5 paid out on the cash deposited by WFA's customers with those Banks.

6 5. In its agreement with its customers, WFA specifically acknowledges that it is a
7 fiduciary vis-a-vis its customers for purposes of the Programs, as the agreements state that WFA
8 purports to act as its customers' "**agent**" not only as when making deposits of customer money
9 into the Program banks, but also, crucially, when establishing and maintaining the Bank Deposit
10 Sweep Programs. WFA's actions in designing, implementing, and operating the Bank Deposit
11 Sweep Programs to benefit itself at the expense of its customers constitutes a breach of the
12 fiduciary duties that WFA owes to its customers, the members of the proposed Class here including
13 the Plaintiff, and constitute a breach of the contract that WFA entered into with those customers.
14 Furthermore, WFA utilizes material misrepresentations and the omission of key facts concerning
15 its Bank Deposit Sweep Programs to obscure from its customers how the Programs truly operate.

16 6. Over the past several months, WFA's conduct has finally begun to draw regulatory
17 scrutiny. In November 2023, WFA disclosed an investigation by the SEC concerning its Bank
18 Sweep Programs for certain types of accounts. Then in July 2024, WFA announced that it will be
19 changing the pricing of its Bank Sweep Programs to pay customers a higher rate of interest.
20 According to WFA, the price changes will likely cost Defendants an estimated \$350 million in
21 yearly revenue, evidence of the massive windfall the Programs provide to Defendants at the
22 expense of WFA's customers.

23 7. Plaintiff brings this action individually and on behalf of a Class of similarly situated
24 individuals for breach of fiduciary duty, gross negligence, negligent misrepresentations, breach of
25 contract, and unjust enrichment to recover damages arising out of WFA's violations of the law,
26 and for such other relief as the Court may deem just and proper.

II. JURISDICTION AND VENUE

8. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §1332(d)(2), as this action is brought as a class action on behalf of class members, one or more members of the class are citizens of a state different than the Defendants, and the amount in controversy exceeds five million dollars (\$5,000,000), exclusive of interest and costs.

9. The Court has personal jurisdiction over Defendants because Wells Fargo, WFA's parent company and control person, has its principal place of business and is headquartered in this District, regularly transacts business in California, and thus has minimum contacts in California and in this District.

10. Venue is proper under 28 U.S.C. § 1391 because among other things, defendant Wells Fargo maintains its headquarters in this District, defendant WFA has offices in this District, and a substantial part of the events, omissions, and/or relevant conduct by Defendant giving rise to Plaintiff's claims occurred in this District.

III. PARTIES

A. Plaintiff

11. Keith Bujold ("Plaintiff"), is a customer of WFA and a resident of New Mexico. Plaintiff has been a customer of WFA since at least 2014 and opened accounts with WFA in which cash was held in varying amounts over the course of the life of the accounts. At all relevant times, the cash held in Plaintiff's accounts was automatically "swept" into low-interest bearing bank accounts pursuant to the Programs – accounts for which WFA ultimately received fees and returns on investments far higher than what was paid out to Plaintiff.

B. Defendants

12. Defendant Wells Fargo is a financial services company headquartered in this District at 420 Montgomery Street, San Francisco, California 94101. Wells Fargo describes itself as a leading financial services company that provides a diversified set of banking, investment and mortgage products and services, as well as consumer and commercial finance through banking locations and offices, the internet and other distribution channels to individuals, businesses, and

1 institutions in all 50 states, the District of Columbia and in countries outside the U.S. Wells Fargo
2 is named as a defendant herein in its capacity as the parent company and control person of Wells
3 Fargo Clearing Services, LLC, dba Wells Fargo Advisors.

4 13. Defendant Wells Fargo Clearing Services, LLC dba Wells Fargo Advisors is a
5 dually registered broker-dealer and Registered Investment Advisor or “RIA” that offers brokerage
6 and investment advisory services to its nationwide client base. Wells Fargo Advisors is a trade
7 name used by Wells Fargo Clearing Services, LLC. Defendant offers brokerage services to
8 Plaintiff and members of the proposed Class, acting as its customers’ agent regarding the
9 establishment, maintenance, and operation of the Programs. Wells Fargo Clearing Services, LLC
10 dba WFA is a majority-owned subsidiary of defendant Wells Fargo. In its BrokerCheck reports
11 filed with the Financial Industry Regulatory Authority (“FINRA”), Wells Fargo Clearing Services
12 states that it is 75% or more owned by Wells Fargo, and that as owner, Wells Fargo directs the
13 management or policies of the firm.

14 IV. FACTUAL BACKGROUND

15 A. The Bank Deposit Sweep Programs Were Established by WFA for Its Own 16 Benefit, Not That of Its Customers’

17 14. Under the Bank Deposit Sweep Programs, available cash balances in WFA
18 customers’ accounts are automatically swept into interest-bearing accounts at either Affiliated
19 Banks or Unaffiliated Banks.

20 15. The Bank Deposit Sweep Programs consist of two separate but similar programs:
21 the Expanded Bank Deposit Sweep and the Standard Bank Deposit Sweep, all of which are
22 discretionarily selected by WFA.

23 16. The Expanded Bank Deposit Sweep is the primary option for eligible clients and
24 operates by sweeping customers’ cash balances into interest-bearing deposit accounts at one of
25 five banks (the “Program Banks”). These Program Banks are a collection of both Affiliated and
26

1 Unaffiliated Banks. Under the Expanded Bank Deposit Sweep, customers are precluded from
2 excluding the Affiliated Banks as a destination for their cash balances.

3 17. Certain customers, specifically those with “Resource” accounts and retirement
4 accounts in WFA’s discretionary advisory programs, cannot elect the Expanded Bank Deposit
5 Sweep and are restricted to the Standard Bank Deposit Sweep as their Bank Deposit Sweep
6 Program.

7 18. The Standard Bank Deposit Sweep operates by sweeping customers’ cash balances
8 into interest-bearing deposit accounts at two or more WFA Affiliated Banks.

9 19. Each business day, available cash balances in all eligible customer accounts are
10 swept out of the accounts and into one of the Program Banks, depending on which sweep type the
11 account qualifies for and the capacity of the Banks to accept additional deposits.¹

12 20. Customers’ account statements indicate their cash sweep balance and show interest
13 or dividends which reflect their returns from the Bank Deposit Sweep Programs.

14 21. WFA, acting as its customers’ “agent”, according to the terms of its contracts with
15 its customers, was legally and duty bound to establish and maintain the Bank Deposit Sweep
16 Programs in the best interests of its customers, not itself.

17 22. The contractual terms and conditions of WFA’s relationship with its customers,
18 including regarding the Cash Sweep Program, are governed and controlled by the General Account
19 Agreement and Disclosure Document (the “Account Agreement”), and the Wells Fargo Advisors’
20 Cash Sweep Program Disclosure Statement (the “Cash Sweep Program Disclosure Statement”).
21 As explained by the Account Agreement, “the Cash Sweep Program is described more fully in the
22 Cash Sweep Program Disclosure Statement which is included with this Agreement.”

23 23. The Cash Sweep Program Disclosure Statement defines the relationship between
24 WFA and its customers regarding the Bank Deposit Sweep Programs as follows:

25
26 ¹ Certain commercial and public fund account types are ineligible for either Bank Deposit Sweep
27 Program and are instead placed in a taxable money market fund. Those accounts are not a subject
28 of the present action and are excluded from the Class.

1 Wells Fargo Advisors *will act as your agent in establishing and maintaining the*
2 *Bank Deposit Sweep Programs*, including making deposits to and withdrawals
3 from the Bank Deposit Sweep Programs. Your first deposit into the Standard Bank
4 Deposit Sweep or Expanded Bank Deposit Sweep *will constitute your appointment*
5 *of Wells Fargo Advisors as your agent in connection with the Standard Bank*
6 *Deposit Sweep or Expanded Bank Sweep*.

7 (Emphases supplied).

8 24. As its customers' agent, WFA was legally bound to act in the best interest of those
9 customers.

10 25. Thus, under the express terms of the Cash Sweep Program Disclosure Statement,
11 WFA, acting as its customers' agent in connection with *establishing and maintaining, and*
12 *thereafter operating, the Bank Deposit Sweep Programs*, was duty bound to establish, maintain,
13 and operate the Bank Deposit Sweep Programs in the best interests of its principals, i.e., its
14 customers such as Plaintiff and the members of the proposed Class.

15 26. Notwithstanding, WFA established, maintained, and operated the Bank Deposit
16 Sweep Programs for its own best interests, contrary to the interests of its customers/member of the
17 proposed Class here, as set forth in more detail below.

18 27. WFA's actions *vis-a-vis* the Bank Deposit Sweep Programs breached its contract
19 with its customers and the fiduciary duties it owed to those customers.

20 28. More specifically, the Programs were structured as follows. As the first step, the
21 Affiliated Banks—i.e., *banks affiliated with WFA*—purportedly “set” the rate of interest that
22 would be paid to its customers under the Programs “in consultation” with WFA. WFA does not
23 “negotiate” on its customers' behalf to try and obtain the best rates of interest for them; rather, it
24 “consult[s]” with its Affiliated Banks, i.e., that is, it agrees and acquiesces to the rates set by
25 WFA's affiliates regardless of whether those terms are in its customers' best interest. Indeed, the
26 rates that WFA sets in consultation with its Affiliated Banks are far below the rates WFA
27 customers could have otherwise earned on their cash in the marketplace.
28

1 29. As a second step, WFA uses the artificially low rates it sets with its Affiliated Banks
2 as a benchmark. It then “directs” the Unaffiliated Banks to pay its customers the same low
3 benchmark rate WFA set with its Affiliated Banks.

4 30. WFA and its Affiliated Banks keep the difference between the artificially low rates
5 WFA pays to its customers and what the Affiliated Banks actually pay or earn, and WFA keeps
6 for itself the difference between the artificially low rate WFA pays to its customers and what the
7 Unaffiliated Banks actually offer and/or pay.

8 31. By establishing and maintaining the Programs in this fashion, and thereafter
9 agreeing with its Affiliated Banks to set an artificially low rate to pay its customers, then using
10 that low rate as a benchmark for what WFA’s customers receive from the Unaffiliated Banks, and
11 keeping the difference for itself, WFA breached its fiduciary duties to its customers as their agent,
12 and also breached its contract with those customers that it would act as their agent, not for its own
13 benefit. WFA’s process created a clear conflict of interest that WFA fails to properly disclose or
14 mitigate.

15 32. As a result of this self-interested process established and maintained by WFA,
16 WFA’s customers receive the same low rates on their cash balances in their WFA accounts from
17 all Program Banks. Conversely, WFA retains the majority of the returns generated by its
18 customers’ cash balances, in the form of fees it collects for itself from the beneficial payments it
19 receives from the Program Banks for its customers’ cash deposited with those Banks.

20 33. Moreover, WFA states that it “assumes no obligation to seek or negotiate interest
21 rates in excess of any reasonable rate of interest the Affiliated Banks are willing to credit,” but it
22 omits to disclose that the “reasonable” designation is false and mischaracterizes the interest rates
23 offered by the Affiliated Banks. Indeed, those rates are anything but reasonable and, as stated
24 above, WFA compounds the harm by directing the Unaffiliated Banks to pay WFA’s customers
25 those same, unreasonably low rates that the Affiliated Banks pay.

26 34. In contrast to the unreasonable returns WFA pays its customers, WFA retains as
27 fees for itself a substantial portion of the beneficial returns on each of its customers’ cash, which
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portion is not disclosed to its customers, and instead is described as an “up to” calculation applicable in the aggregate to all customer cash deposited with the Program Banks, such that no individual customer can ascertain WFA’s fees on that customer’s cash sweep.

35. WFA exercises discretion, in its capacity as the agent of its customer, as to the Programs and its key features, including designing, establishing and maintaining the Programs, selecting the Program Banks, agreeing to the rates of return for its customers’ cash, making a reasonability determination as to the rates paid by its Affiliated Banks, deciding how much its customers will receive in interest on their cash in the Cash Sweep Programs, and deciding how much WFA will keep for itself in fees for its role in the Cash Sweep Programs.

B. WFA’s Disclosures to Its Customers Regarding the Bank Deposit Cash Sweep Programs Contained Material Misrepresentations and Omissions.

36. WFA made material misrepresentations and omitted material information when describing the Bank Deposit Sweep Programs to its fiduciary customers. Then, in late 2023, following a number of lawsuits filed against WFA’s competitors arising out of those competitors’ cash sweep programs, WFA *changed* some of its disclosures regarding the Programs.² While the amended disclosures made in late 2023 were still inadequate and contained material misrepresentations and omissions regarding the Programs, the changes reflect an acknowledgement by WFA that its prior disclosures surrounding the Bank Deposit Cash Sweep Program were not adequate.

37. For example, in the section titled “Rate of Return,” the 2019–2023 Disclosure Statements stated the following:

These rates will vary over time and *may be lower* than rates available to clients making deposits directly with the Program Banks or at other banks.

(Emphasis supplied throughout this section unless otherwise indicated).

² The 2023 changes were carried forward to the 2024 Disclosure Statement and were repeated therein verbatim.

1 38. The above statement omitted to disclose that the rates WFA paid its customers were
2 *always* lower than the customer could obtain by making deposits directly with the Program Banks
3 or at other banks.

4 39. Then, in late 2023, following lawsuits filed against some of WFA's competitors,
5 WFA changed the above disclosure to read:

6 These rates will vary over time and *are typically lower* than rates available to clients
7 making deposits directly with the Program Banks or at other banks.

8 40. The late 2023 amended disclosures continued to include material omissions about
9 the Programs ("typically" does not mean "always"). Notwithstanding, the change reflects an
10 acknowledgement by WFA that its prior disclosures were inadequate.

11 41. Similarly, in a section titled "Benefits to Wells Fargo and Others," the 2019 – 2023
12 Disclosure Statements stated:

13 Higher rates of interest than the rates credited by the Affiliated Banks on Expanded
14 Bank Deposit Sweep deposits *may be* available outside of the Cash Sweep Program.

15 42. The above statement omitted to disclose that the rates credited by the Affiliated
16 Banks on Expanded Deposit Sweep deposits were *always* lower than the customer could obtain by
17 making deposits outside of the Cash Sweep Programs, as a result of the fact that WFA and the
18 Affiliated Banks retained a substantial part of the credit for themselves.

19 43. From late 2023 forward, that same section of the Disclosure Statements noted that
20 other cash investment options "*typically* pay you higher rates of interest," which remained
21 misleading as "typically" does not mean "always."

22 44. Similarly, the 2019–2023 Disclosure Statements represented that:

23 We and the Program Banks *may* pay rates of interest on the Expanded Bank Deposit
24 Sweep that are lower than the prevailing market interest rates.

45. The above statement was misleading in that the rates of interest paid under the Programs were *always significantly lower* than prevailing market rates. Moreover, for 2023 forward, the Disclosure Statements made the following revelation:

The Program Banks pay rates of interest on the Bank Deposit Sweep Program deposits ***that are significantly less*** than the spread those banks earn on deposits.

46. The Disclosure Statements omitted additional material information. For example, in its 2019–2023 Disclosure Statements, WFA simply stated “[y]ou may elect not to participate in the Cash Sweep Program and/or periodically invest cash balances directly in available money market mutual funds or other products offered as direct investments outside of the Cash Sweep Program,” but failed to disclose to its fiduciary customers – whom it had automatically placed in the Programs – that they ***would*** earn a higher rate of return had they chosen other options for their cash balances.

47. Starting with its late 2023 Disclosure Statements, WFA changed the disclosures above to its fiduciary customers to read:

You may elect not to participate in the Cash Sweep Program and/or periodically invest cash balances directly in available money market mutual funds or other products offered as direct investments outside of the Cash Sweep Program, ***options which likely generate a higher rate of interest or yield*** than the Cash Sweep Program.

48. In addition, the following material information was entirely omitted from the 2019 – 2023 Disclosure Statements:

The interest rates paid to client accounts in the Bank Deposit Sweep Program are deducted from these payments, and Wells Fargo Advisors retains the remainder. Accordingly, Wells Fargo Advisors has an incentive to pay lower interest rates to participating accounts. Note that the fee Wells Fargo Advisors receives from the Program Banks usually exceeds the interest paid to participating client accounts by a substantial amount. Moreover, due to the contractual arrangements in place between the Unaffiliated Banks and Wells Fargo Advisors, the rates paid out to clients will be substantially lower than the Federal Funds Effective Rate and will not increase as quickly as the Federal Funds Effective Rate.

49. Those disclosures, added in late 2023, still omitted material information in that WFA failed to disclose to each of its fiduciary customers the amount of fees it was keeping for itself from their beneficial returns paid by the Program Banks on their account balances, and also failed to disclose that the fees WFA received from the Program Banks *always* exceeded the interest paid to participating client accounts by a substantial amount.

50. Finally, defendant WFA falsely described the rate of return provided to its fiduciary customers on their cash assets as “reasonable,” when in fact it was not. As a result, WFA’s fiduciary customers were left entirely uninformed of the spread between the returns generated by their own cash and the minimal payments they ultimately received on those cash balances and were not in a situation to give informed consent regarding WFA’s Cash Sweep Programs.

C. WFA Breaches Its Contract with Its Customers by Failing to Obtain Reasonable Rates of Interest for Their Cash Assets as Well.

51. In its contract with its customers that governs the Cash Sweep Programs, WFA undertook a duty to negotiate “reasonable” rates of return on its customers’ cash balances, and thus it was contractually required to do so.

52. However, the rates agreed to by WFA for its customers were not reasonable. This is because WFA agreed to allow its Affiliated Banks to pay unreasonable rates to WFA’s customers, and then directed the Unaffiliated Banks to pay the same unreasonable rates.

53. Further, despite not possessing an ownership interest in its customers’ beneficial returns on their cash balances deposited with the Program Banks, WFA misused its fiduciary relationship with its customers to retain a substantial portion of those funds for its own benefit.

54. In so doing, WFA breached its contract with its customers related to the Cash Sweep Program.

V. Class Action Allegations

55. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

Existence and Predominance of Common Questions of Law and Fact

Rule 23(a)(2), 23(b)(3)

61. Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual Class members. These common legal and factual questions, each of which may also be certified under Rule 23(c)(4), include the following:

- a. Whether defendant WFA owed fiduciary duties to Plaintiff and the putative Class members in connection with the Programs;
- b. Whether defendant WFA breached its duties to Plaintiff and the putative Class members in establishing, maintaining, and/or operating the Programs;
- c. Whether defendant WFA made material misrepresentations and/or omissions to Plaintiff and the putative Class members regarding the Programs;
- d. Whether defendant WFA breached its contract with Plaintiff and the putative Class members regarding the Programs;
- e. Whether defendant WFA was unjustly enriched by its wrongful conduct;
- f. Whether this case may be maintained as a class action under Fed. R. Civ. P. 23;
- g. Whether and to what extent Class members are entitled to damages and other monetary relief; and
- h. Whether and to what extent Class members are entitled to attorneys' fees and costs.

Typicality

Rule 23(a)(3)

62. Plaintiff's claims are typical of the claims of the Class because he was a customer of Defendant that had his cash balances improperly managed by WFA through its administration of the Bank Deposit Sweep Programs. Thus, Plaintiff's claims are typical of the claims of the members of the Class as the claims arise from the same course of conduct by Defendant, and the relief sought within the Class is common to the members of each.

Adequacy of Representation**Rule 23(a)(4)**

63. Plaintiff will fairly and adequately protect the interests of Class members. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously. Plaintiff has no interests adverse or antagonistic to those of the Class.

Superiority**Rule 23(b)(3)**

64. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are small compared with the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for the Class members, on an individual basis, to obtain effective redress for the wrongs done them.

65. Even if Class members could afford individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

66. Additionally, the Class may be certified under Rule 23(b)(1) and/or (b)(2) because:

- a. The prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Defendant;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

- c. Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Class members as a whole.

FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY

67. Plaintiff repeats and incorporates by reference the preceding factual allegations as if fully set forth herein.

68. At all relevant times, defendant WFA owed fiduciary duties to Plaintiff and the members of the Class in connection with the Programs. Such duties independently arose out of (1) the agency relationship between defendant WFA, on one hand, and Plaintiff and the members of the Class on the other hand, as to the Programs; (2) defendant WFA's holding and control over beneficial funds that belonged to its customers, related to their cash sweep balances; and/or (3) the applicable industry standards. As a fiduciary to Plaintiff and the Class, defendant WFA owed them the highest duties of loyalty, candor, due care, and prudence in as to the services it provided to them in connection with establishing, maintaining, and/or operating the Programs. Moreover, as a fiduciary, defendant WFA had a continuing duty to act exclusively for the benefit of Plaintiff and the Class in connection with establishing, maintaining, and/or operating the Programs. Lastly, as a fiduciary, defendant WFA had a continuing duty to obtain *informed* consent from Plaintiff and the Class regarding the Programs.

69. Defendant WFA further owed Plaintiff and the Class the fiduciary duty to act in good faith in connection with establishing, maintaining, and/or operating the Programs.

70. Defendant WFA further owed Plaintiff and the Class the duty to charge reasonable fees for its services related to the Programs.

71. Plaintiff and the Class were fully dependent upon defendant WFA's ability, skill, knowledge, and goodwill with respect to Defendant WFA's Programs.

72. Defendant Wells Fargo owed Plaintiff and the Class similar duties by virtue of its control over defendant WFA's policies or management with regard to the Programs.

73. Defendants breached their fiduciary duties by the conduct alleged herein, including by designing, structuring, and/or operating the Programs to benefit itself at the expense of its fiduciary customers, making material misrepresentations and omissions regarding the Programs, violating its duty of care, and acting in its own – not its customers’ – best interest *vis-à-vis* the Programs.

74. Defendants violated their duty of loyalty by, among other things, putting their interest above that of their fiduciary customers, failing to provide sufficient information to their fiduciary customers regarding material features of the Programs to obtain *informed* consent from them, and not properly disclosing their own conflicts of interest arising out of the Programs, as more fully shown above.

75. As a direct and proximate consequence of Defendants’ conduct as alleged herein, Plaintiff and the Class suffered damages in an amount to be determined at trial, and seek disgorgement of any undue and unjust gains of Defendants, punitive damages, as well as all other equitable relief deemed just and proper.

76. Defendants’ conduct warrants a punitive damage award because defendant has been guilty of oppression, fraud, and/or malice, engaged in conduct that is outrageous, and exhibited reckless indifference to the rights of its customers. Defendants engaged in misrepresentation and/or concealed material facts known to the defendant with the intention on its part of thereby depriving its customers, including Plaintiff and the proposed Class, of property and/or legal rights or otherwise causing injury, as more fully stated above.

SECOND CAUSE OF ACTION
GROSS NEGLIGENCE

77. Plaintiff realleges and incorporates by reference the preceding factual allegations as if fully set forth herein.

78. Defendant WFA owed Plaintiff and the putative Class, all of whom were its fiduciary customers vis-a-vis the Programs, certain duties related to its establishment, maintenance, and operation of the Programs.

1 79. Those duties arose out of (1) the agency relationship between defendant WFA, on
2 one hand, and Plaintiff and the members of the Class on the other hand, as to the Programs; (2)
3 defendant WFA's holding and control over beneficial funds that belonged to its customers, related
4 to their cash sweep balances; and (3) the applicable industry standards.

5 80. WFA's duties to its customers included establishing, maintaining, and/or operating
6 the Programs for the benefit of WFA's customers, not for WFA's own benefit; negotiating
7 reasonable interest rates for its customers' cash with the Program Banks; and charging reasonable
8 fees for its Program-related services. Moreover, defendant WFA had a duty make sufficient
9 disclosures to its customers regarding the Programs as needed for those customers to give
10 *informed* consent regarding the Programs.

11 81. Defendant Wells Fargo owed Plaintiff and the Class similar duties by virtue of its
12 control over defendant WFA's policies or management with regard to the Programs.

13 82. Defendants breached their duties by the conduct alleged herein, including by
14 designing, structuring, and/or operating the Programs to benefit themselves at the expense of their
15 customers, making material misrepresentations and omissions regarding the Programs, violating
16 their duty of care, acting in their own – not their customers' – best interest *vis-à-vis* the Programs,
17 failing to negotiate reasonable interest rates for its customers' cash with the Program Banks, and
18 failing to charge reasonable rates for their services.

19 83. Defendants were not merely negligent; as more fully shown above, they were
20 grossly negligent because their self-serving conduct showed the want of even scant care and/or
21 was an extreme departure from the ordinary standard of conduct.

22 84. Defendants' gross negligence directly and proximately caused harm to Plaintiff and
23 the members of the proposed Class.

THIRD CAUSE OF ACTION
NEGLIGENT MISREPRESENTATIONS AND OMISSIONS

85. Plaintiff repeats and re-alleges each of the factual allegations contained in the foregoing paragraphs as if fully set forth herein.

86. Defendants were Plaintiff's agent in connection with the Programs and owed Plaintiff a duty of care *vis-a-vis* the Programs.

87. Defendants, in their Cash Sweep Disclosure Documents, with gross negligence omitted material information and made material misrepresentations to its customers about the Programs.

88. Defendants' material misrepresentations and omissions concerned critical details of the Programs, including the specific amounts of fees or compensation that defendant received on each of its fiduciary customers' cash deposited in the Program Banks, key features of the Programs as more fully described above including the returns offered by the Programs on WFA customers' cash, the reasonableness of the interest rates received by the customers, Defendants' conflicts of interest, the magnitude of defendant's fees and benefits derived from its customers' cash and beneficial returns on such cash, and the resulting harm this caused to Plaintiff and the proposed class.

89. Plaintiff and the proposed Class justifiably relied on Defendants' representations and omissions regarding the Programs and accordingly maintained cash balances in their WFA accounts to their detriment.

90. Defendants' grossly negligent misrepresentations and omissions directly and proximately caused harm to Plaintiff and the members of the proposed Class.

FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT (IN THE ALTERNATIVE)

91. Plaintiff realleges and incorporates by reference the preceding factual allegations as if fully set forth herein.

1 92. In the alternative, Defendants have received and retained a benefit from Plaintiff
2 and the members of the proposed Class, and inequity has resulted.

3 93. Defendants benefited through their unjust conduct by sweeping available cash
4 balances from their customers' accounts in the Program into bank accounts selected for the benefits
5 they offered to defendant WFAs, not their customers, and retained most of the interest generated
6 by those cash balances.

7 94. Plaintiff alleges that it is inequitable for Defendants to retain these benefits.

8 95. Plaintiff alleges that because of Defendants' conduct, the amount of their unjust
9 enrichment should be disgorged in an amount to be proven at trial.

10 **FIFTH CAUSE OF ACTION**
11 **BREACH OF CONTRACT (IN THE ALTERNATIVE)**

12 96. Plaintiff repeats and realleges each of the factual allegations in the forgoing
13 paragraphs as if fully set forth herein.

14 97. Plaintiff asserts this cause of action for breach of contract in the alternative.

15 98. Defendant WFA's relationship with its customers is governed by a written contract,
16 the terms of which are contained in, and incorporated into various standardized documents drafted
17 by defendant.

18 99. One such document is the Cash Sweep Program Disclosure Statement. To become
19 a customer of Defendants, each member of the proposed Class must agree to the terms of this
20 document.

21 100. Pursuant to the Cash Sweep Program Disclosure Statement, Defendants were and
22 continue to be contractually obligated to obtain for Plaintiff and members of the proposed Class
23 rates of return on their cash balances that are reasonable and to otherwise act as an agent of the
24 customers in the establishment, maintenance, and operation of the Programs.

25 101. As set forth herein, the fees charged by Defendants for the administration of the
26 Programs were excessive and the rates of return paid to customers on their cash balances were not
27

1 reasonable. Accordingly, Defendants breached their contracts with Plaintiff and the members of
2 the proposed Class.

3 102. Plaintiff and the members of the proposed Class were harmed by Defendants'
4 breach.

5 **SIXTH CAUSE OF ACTION**
6 **VIOLATION OF NEW YORK GENERAL BUSINESS LAW**
7 **GBS § 349 – DECEPTIVE ACTS AND PRACTICES UNLAWFUL**

8 103. Plaintiff repeats and realleges each of the allegations in the forgoing paragraphs as
9 if fully set forth herein.

10 104. The agreement between the parties giving rise to this action was deemed to have
11 been made in the State of New York, and Defendants selected the New York law as the law
12 applicable to the agreement.

13 105. In the state of New York, deceptive acts or practices in the conduct of any business,
14 trade or commerce or in the furnishing of any service are unlawful.

15 106. The acts and practices of Defendants as alleged herein constitute “deceptive”
16 business acts and practices under GBS § 349(a) as the conduct is misleading in a material way and
17 that plaintiff and the Class have been injured by reason thereof.

18 107. Plaintiff alleges that Defendants have, in the course of their business and the course
19 of trade or commerce, undertaken and engaged in unfair business acts and practices under GBS §
20 349(a) by, among other things, using their Programs to generate substantial revenue for themselves
21 with its customers’ cash and beneficial returns on such cash, while paying their customers only a
22 small fraction of those returns and concealing from such customers the amounts of those
23 customers’ interest that they retained for themselves and the fact that those amounts represented
24 the vast majority of such interest. Defendants have further engaged in material misrepresentations
25 and omissions regarding key features of the Programs.

26 108. The deceptive business acts or practices described herein presented a threat and
27 likelihood of harm and deception to Plaintiff and the members of the proposed Class in that
28

1 Defendants systematically perpetrated the unfair conduct upon members of the public by engaging
2 in the conduct described herein.

3 109. As a result of Defendants' misrepresentations and omissions of material facts
4 concerning the Programs, Plaintiff and the members of the proposed Class have suffered an
5 ascertainable loss of money, property, and/or value and were harmed and suffered actual damages.

6 110. Had Plaintiff and the members of the proposed Class been aware of defendant
7 WFA's conduct regarding its customer cash in the Programs, Plaintiff and the members of the
8 proposed Class would not have participated in those investment products or would have done so
9 on different terms.

10 111. The gravity of harm resulting from Defendants' unfair conduct outweighs any
11 potential utility.

12 112. The harm from Defendants' conduct was not reasonably avoidable by Plaintiff and
13 the members of the proposed Class because only Defendants were aware of the true facts
14 concerning the Programs, and Defendants did not disclose these facts, or did not sufficiently
15 disclose them.

16 113. Plaintiff and the members of the proposed Class have suffered injury in fact and
17 have lost money as a direct and proximate result of Defendants' business acts or practices. Monies
18 lost by Plaintiff and members of the proposed Class include, without limitation, the beneficial
19 returns on cash positions from the Programs that defendant WFA improperly withheld from
20 Plaintiff and members of the proposed Class in the form of money as fees for defendant WFA, as
21 set forth above.

22 114. Through their unfair conduct, Defendants acquired money that Plaintiff and the
23 members of the proposed Class were entitled to.

24 115. Plaintiff and the members of the proposed Class accordingly seek appropriate relief
25 under GBS § 349, including (a) in the alternative, restitution in full and disgorgement of all profits
26 relating to the above-described unfair business acts or practices, and (b) such orders or judgments
27 as may be necessary to enjoin Defendants from continuing their unfair practices.

116. Plaintiff, on behalf of himself and the members of the proposed Class also seek reasonable attorneys' fees and costs under applicable law, including GBS § 349(h).

PRAYER FOR RELIEF

Plaintiff requests relief as follows:

- A. Actual damages;
- B. Punitive damages;
- C. Injunctive relief prohibiting Defendants from continuing to engage in the conduct alleged herein;
- D. Attorneys' fees and costs of suit;
- E. Prejudgment interest; and
- F. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: July 30, 2024

Respectfully submitted,

/s/ Joshua P. Davis

Joshua P. Davis (SBN 193254)
Kyla J. Gibboney (SBN 301441)
Julie A. Pollock (SBN 346081)
BERGER MONTAGUE PC
505 Montgomery Street, Suite 625
San Francisco, CA 94111
Tel: (800) 424-6690
jdavis@bm.net
kgibboney@bm.net
jpollock@bm.net

Michael Dell'Angelo*
Andrew D. Abramowitz*
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
mdellangelo@bm.net
aabramowitz@bm.net

1 Alan L. Rosca, Esq.* (OH 0084100)
Jonathan A. Korte, Esq.* (FL 126450)
2 ROSCA SCARLATO LLC
2000 Auburn Dr. Suite 200
3 Beachwood, OH 44122
Telephone: (216) 946-7070
4 E-mail: arosca@rscounsel.law
5 jkorte@rscounsel.law

6 Paul J. Scarlato, Esq.* (PA 47155)
161 Washington Street, Suite 1025
7 Conshohocken, PA 19428
Telephone: (216) 946-7070
8 E-mail: pscarlato@rscounsel.law

9 * *pro hac vice* forthcoming

10
11 *Attorneys for Plaintiff and the Proposed*
12 *Class*

ATTESTATION

Pursuant to Civil L.R. 501(h)(3), the undersigned attests that each of the other Signatories have concurred in the filing of the document.

Dated: July 30, 2024

By: /s/ Joshua P. Davis
Joshua P. Davis (SBN 193254)
BERGER MONTAGUE PC
505 Montgomery Street, Suite 625
San Francisco, CA 94111
Tel: (800) 424-6690
jdavis@bm.net